## REMARKS/ARGUMENTS

The present application has been reviewed in light of the Final Office Action mailed July 6, 2010, an Advisory Action mailed September 14, 2010, and together with the filing of a Request for Continued Examination herewith. Claims 100 and 103-109 are currently pending, claims 1-99, 101 and 110 having been previously cancelled, and claims 100, 102 and 109 having been amended herein. Reconsideration of the present application is respectfully requested. Applicant reserves the right to file one or more Continuation and/or Divisional Applications as appropriate. No new matter has been added by the present amendment.

Claims 100, 102-104 and 106-110 stand rejected in the Final Office Action mailed July 6, 2010 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,609,285 to Grant et al. in view of U.S. Patent No. 5,669,918 to Balazs et al. and U.S. Patent No. 5,855,312 to Toledano. Applicant respectfully submits, however, that Grant in view of Balazs and Toledano fails to disclose each and every element recited in independent claims 100 and 109 as presented herein.

As the BPAI reiterated in In re Wada and Murphy, an obviousness rejection under § 103 requires a suggestion of ***all limitations in a claim***. Appeal 2007-3733 (B.P.A.I. Jan. 2008) (citing In re Royka, 490 F.2d 981, 985 (CCPA 1974); emphasis added). If the references, alone or in combination, do not teach or suggest each and every element of the claim, then the references cannot support a rejection under § 103. See Id.

Independent claim 100 recites a surgical device including, *inter alia*, a trocar shaft disposed through the bore of the housing so as to be moveable relative to the housing, the trocar shaft including a trocar, the trocar shaft defining a longitudinally extending bore in a distal end

thereof and including an annular rim projecting radially inwardly from an inner surface of the bore; and an anvil attachable to the trocar shaft and configured to be moveable relative to the housing by movement of the trocar shaft, the anvil including an anvil sleeve extending proximally from the anvil; and at least a pair of axially extending slots defined in a proximal end portion thereof and extending through a proximal end thereof, the anvil sleeve having a circumferential recess channel formed in an outer surface thereof and extending radially therearound, such that, the proximal end portion of the anvil sleeve deflects radially inward along the pair of opposed axially extending slots to dispose the anvil sleeve in the bore of the trocar shaft, and when the anvil sleeve is disposed in the bore of the trocar shaft, the circumferential recess channel is configured to receive the annular rim to releasably axially secure the anvil sleeve in the bore of the trocar shaft and to axially lock the anvil in a predetermined position relative to the housing. (emphasis added).

Independent claim 109 recites a surgical device including, *inter alia*, a trocar shaft disposed through the bore of the housing so as to be moveable relative to the housing, the trocar shaft including a trocar, the trocar shaft defining a longitudinally extending bore in a distal end thereof and including an annular rim projecting radially inwardly from an inner surface of the bore; and an anvil attachable to the trocar shaft and configured to be moveable relative to the housing by movement of the trocar shaft, the anvil including an anvil sleeve extending proximally from the anvil; and at least a pair of axially extending slots defined in a proximal end portion thereof and extending through a proximal end thereof, the anvil sleeve having a circumferential recess channel formed in an outer surface thereof and extending radially therearound, such that, the proximal end portion of the anvil sleeve deflects radially inward along

the pair of opposed axially extending slots to dispose the anvil sleeve in the bore of the trocar shaft, and when the anvil sleeve is disposed in the bore of the trocar shaft, the circumferential recess channel is configured to receive the annular rim such that the anvil sleeve is axially secured in the bore of the trocar shaft and the anvil is locked in a predetermined longitudinal position relative to the housing.

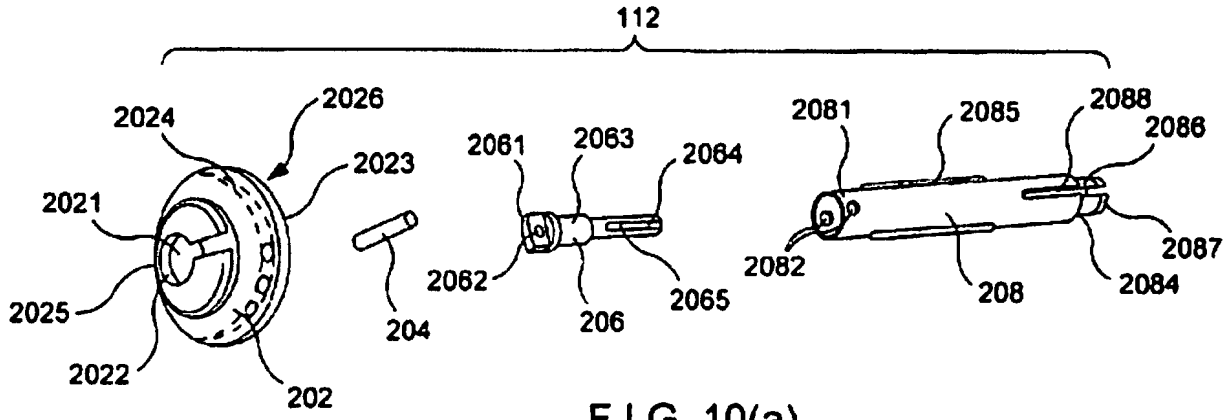
According to the present disclosure and as seen in FIGS. 10(a), 10(c) and 11(a):

> The proximal end 2084 of the anvil sleeve 208 also defines a plurality, e.g., four, **axial slots** 2088 that extend through the recess 2086 and the teeth 2087, thereby enabling the proximal end 2084 of the anvil sleeve 208 to be **radially compressed**. The anvil sleeve 208 also includes one or more longitudinally-extending keys 2085 on its outer surface. (see Para. [0098]). (emphasis added).

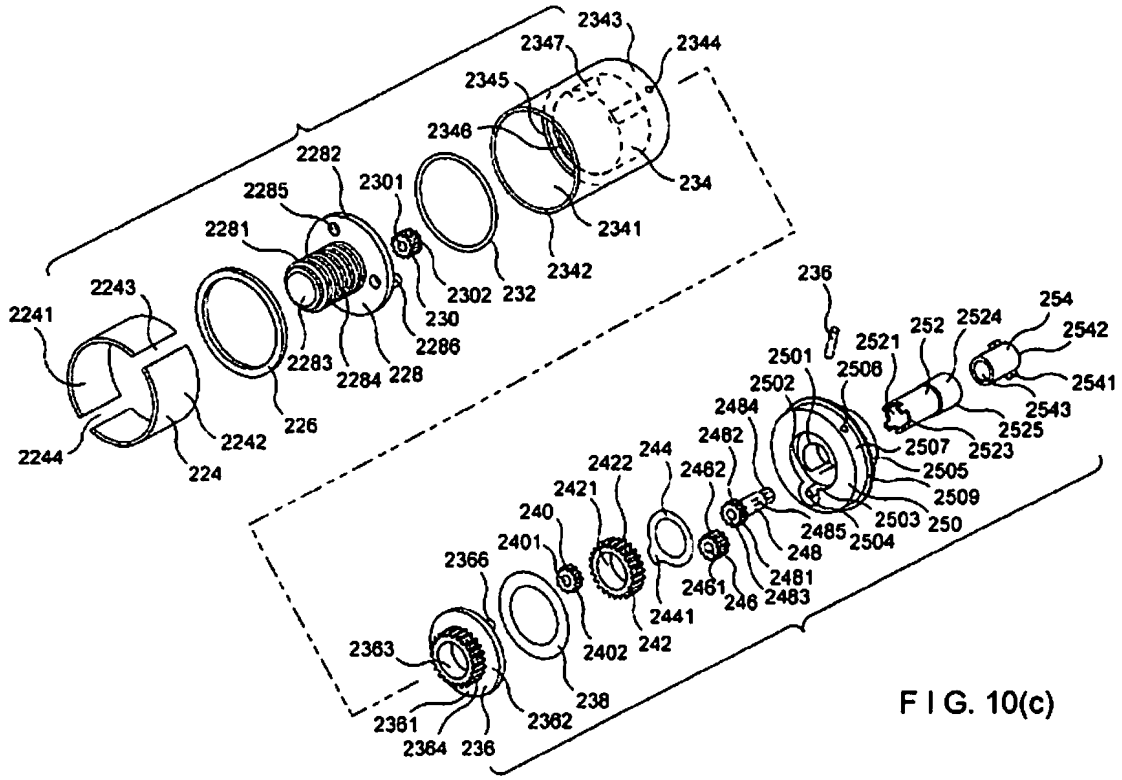
> At a distal end 2522 of the central rear endcap sleeve 252, the bore 2521 defines **a radially inwardly-extending** rim 2523. (see Para. [0111]). (emphasis added).

> In a proximal end 2084 of the anvil sleeve 208 there is defined a recess 2086 that extends circumferentially around the anvil sleeve 208 and that has a radius that is smaller than the radius of the other portions of the anvil sleeve 208, including the radius of several radially-extending teeth 2087 located at the proximal-most end of the anvil sleeve 208. (see Para. [0098]).

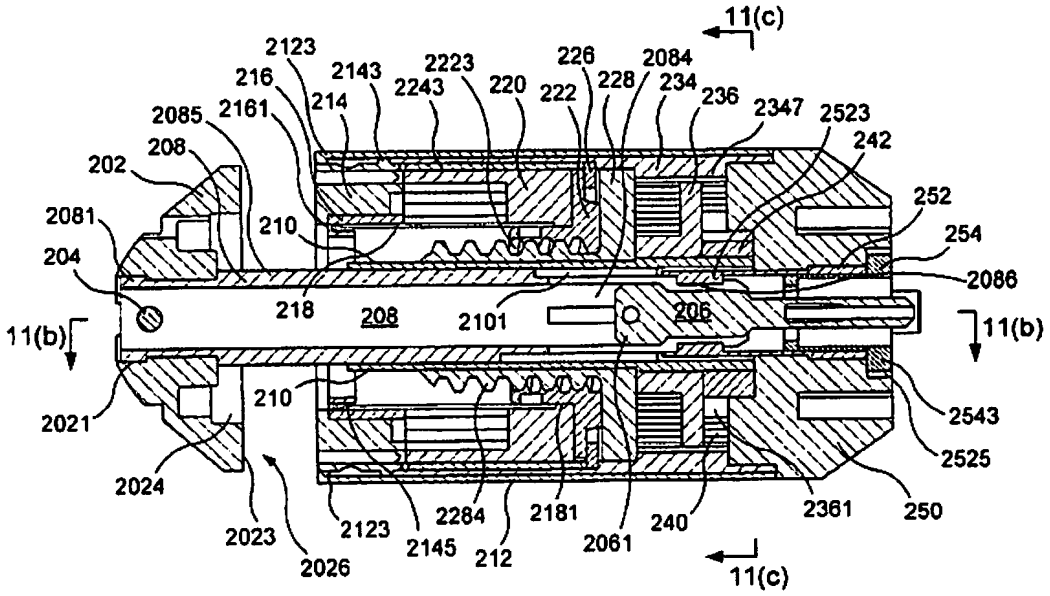
> In the position shown, the rim 2523 of the central rear endcap sleeve 252 is engaged within the recess 2086 of the anvil sleeve 208, thereby axially fixing the central rear endcap sleeve 252 and the anvil sleeve 208 relative to each other. (see Para. [0114]).




F I G. 10(a)




F I G. 10(c)




F I G. 11(a)

Applicant submits that the circumferential recess channel 2086 of anvil sleeve 208 and the annular rim 2523 that **projects** radially inward from sleeve 252 cooperate with one another to maintain an axial position of the anvil relative to the housing.

Additionally, Applicant submits that anvil sleeve 208 is connectable to the trocar shaft due to the radial compression of the proximal end 2084 of the anvil sleeve 208 for insertion into the distal bore of the trocar shaft.

In contrast, Applicant submits that Grant, as seen in FIGS. 13, relates to a surgical anastomosis stapling instrument including a casing or housing 104 that apparently defines an annular rim as illustrated by a rear cylindrical wall 124. Applicant submits that the rear cylindrical wall 124 of housing 104 fails to enter into or be disposed in any circumferential recess channel of any component thereof which functions to maintain the axial position of the

anvil relative to the housing. In fact, a proximal surface of rear cylindrical wall 124 contacts a spring 152, interposed between a main driver 140 and housing 104, and therefore wound suggest that the main driver 140 is axially movable with respect housing 104.

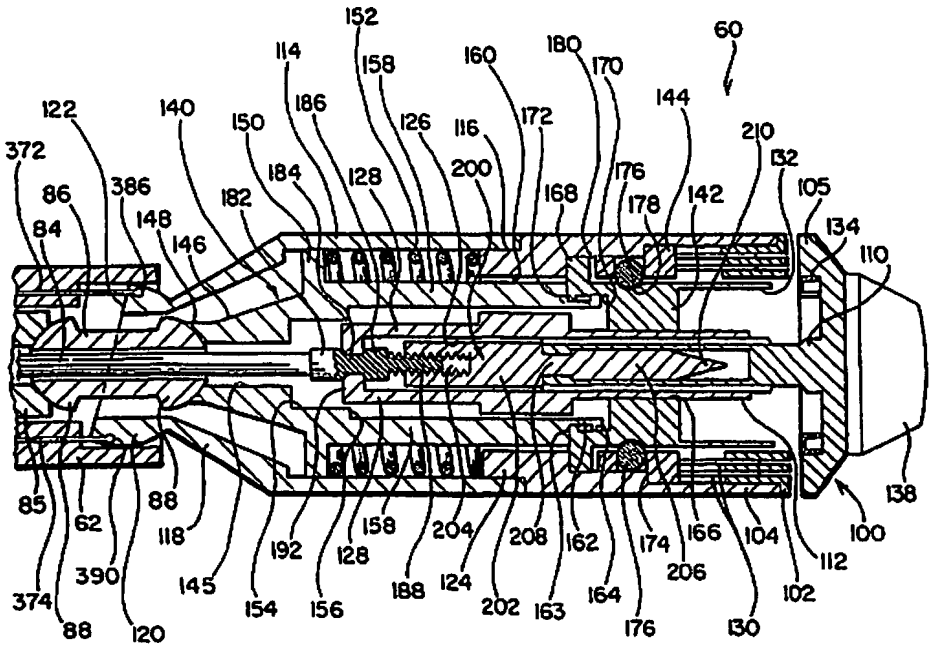


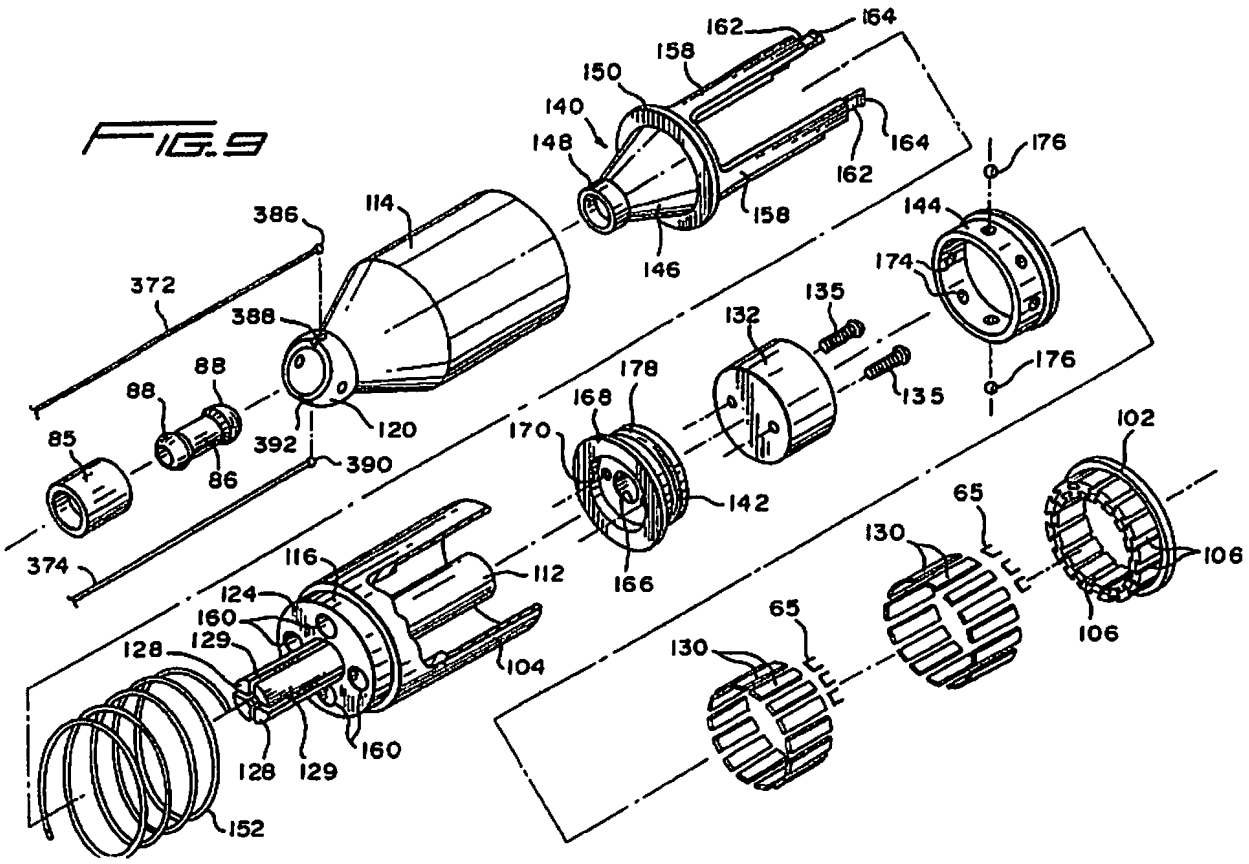

FIG. 13

In the Final Office Action, the Examiner maintains that Grant discloses "a rim 112 extending radially inward from the inner surface 124 of the housing 104 (figure 9-column 11 lines 49-52)." (see Page 2, Section 3 of the July 6, 2010 Final Office Action).

FIG. 9 (reproduced below) illustrates, and Column 11, lines 49-52 recite as follows:

> The casing 104 includes a rear cylindrical wall 124 provided with a central circular bore 126. The guide tube 112 projects forwardly from the rear cylindrical wall 124 in axial alignment with the circular bore 126.

FIG. 9




Applicant respectfully submits that the Examiner has misconstrued and/or mischaracterized the teachings of Grant. As is apparent from a careful review of FIG. 9 and Column 11, lines 49-52 of Grant, guide tube 112 (what the Examiner has characterized as a "rim") cannot constitute the recited "rim." First, the guide tube 112 is a tube, not a rim. Furthermore, even if the guide tube 112 could be considered a rim (which it cannot), the guide tube 112 does not **project** radially inwardly from the inner surface of the casing 104. Rather, the guide tube 112 is a completely separate component from casing 104. Moreover, guide tube 112 shares a common central axis as casing 104. Additionally, guide tube 112 is spaced radially inward from casing 104 and is connected thereto via the rear wall 124. Accordingly, the guide

tube 112 has no contact with the casing 104 at all, and certainly does not "project radially inwardly therefrom" as required by the claim.

The Examiner relies on Balazs to cure the deficiencies of Grant. In the Final Office Action, the Examiner maintains that Balazs teaches a staple housing 30 including an inner surface having an annular rim 22 that extends radially within the housing; and a sleeve 5 extending from an anvil 1, wherein the sleeve has a recess 54 that extends radially around the circumference of the sleeve such that the annular rim 22 is received within the recess 54.

Applicant respectfully submits that the Examiner has misconstrued and/or mischaracterized the teachings of Balazs. Following a careful review of the teachings of Balazs, it is noted that Balazs discloses, as seen in FIG. 2a below, a staple holder 30, an annular knife provided in the interior of the staple holder (see Col. 7, lines 45-47); and a holder part 2 disposed within the circular-cylindrical interior of the annular knife 4 (see Col. 7, lines 58-59). As seen in FIG. 2b of Balazs, reproduced below, holder part 2 has moved with respect to staple holder 30, when compared to FIG. 2a of Balazs.

Fig.2a

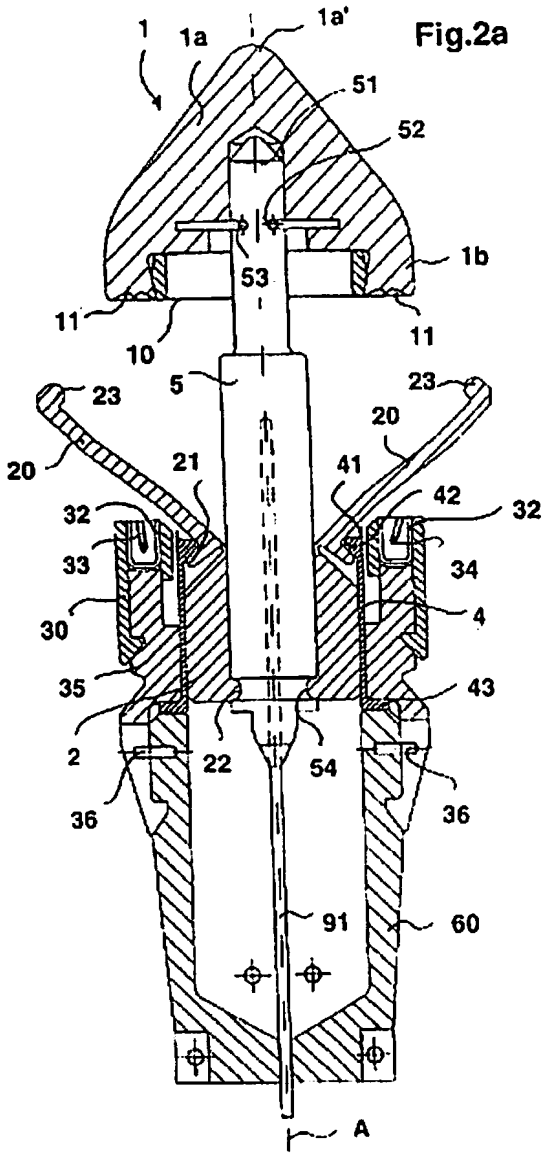
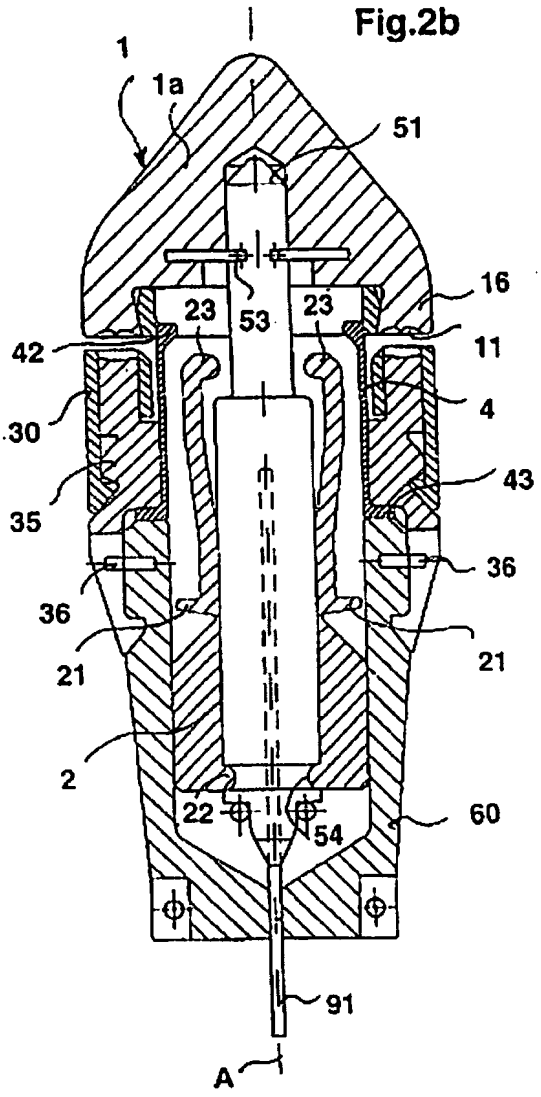



Fig.2b




Independent claims 100 and 109 recite a surgical device including, *inter alia*, a housing having an inner surface, an annular rim **projecting** radially inwardly **from** an inner surface of the bore. (emphasis added).

In view of the foregoing, Applicant submits that holder part 2 of Balazs does not extend radially inward from staple holder 30. Accordingly, Applicant submits that Balazs fails to cure the deficiencies of Grant discussed above.

The Examiner relies on Toledano for the disclosure of a flexible shaft. Applicant submits, that even assuming the disclosure of Toledano proffered by the Examiner is accurate, that Toledano fails to cure the deficiencies of Grant and Balazs in that Toledano fails to teach or suggest each and every element of each of independent claims 100 and 109, in that Toledano fails to teach or suggest a trocar shaft defining a longitudinally extending bore in a distal end thereof and including an annular rim projecting radially inwardly from an inner surface of the bore; and an anvil attachable to the trocar shaft and configured to be moveable relative to the housing by movement of the trocar shaft, the anvil including an anvil sleeve extending proximally from the anvil; and at least a pair of axially extending slots defined in a proximal end portion thereof and extending through a proximal end thereof, the anvil sleeve having a circumferential recess channel formed in an outer surface thereof and extending radially therearound, such that, the proximal end portion of the anvil sleeve deflects radially inward along the pair of opposed axially extending slots to dispose the anvil sleeve in the bore of the trocar shaft, substantially called for in each of independent claims 100 and 109.

Accordingly, in view of the foregoing amendments and remarks, Applicant respectfully submits that Grant in view of Balazs and Toledano fails to suggest or render obvious either of independent claims 100 or 109. For at least these reasons, Applicant submits that the subject matter of each of independent claims 100 and 109, as a whole, is patentable under 35 U.S.C. 35 U.S.C. §103(a) over Grant in view of Balazs and Toledano. Furthermore, since claims 102-104 and 106-108 depend from independent claim 100, and contain all of the limitations thereof, Applicant respectfully submits that the subject matter of claims 102-104 and 106-108, as a whole, is patentable for at least the reasons that independent claim 100 is patentable.

Claim 105 stands rejected under 35 U.S.C. 35 U.S.C. §103(a) as being unpatentable over Grant in view of Balazs and Toledano as applied to claim 108 above, and further in view of U.S. Patent No. 6,491,201 to Whitman. Applicant respectfully submits, however, that Grant in view of Balazs and Toledano and further in view of Whitman fails to disclose each and every element recited in claim 105 as presented herein.

The Examiner relies on Whitman for the disclosure of a surgical instrument having a flexible shaft movable relative to a housing by way of a rotatable driver selectively rotated by at least one motor via a controller. However, even assuming the teachings of Whitman proffered by the Examiner are correct, Applicant submits that Whitman would fail to cure any deficiencies of Grant, Balazs and/or Toledano because Whitman fails to teach or suggest a trocar shaft defining a longitudinally extending bore in a distal end thereof and including an annular rim projecting radially inwardly from an inner surface of the bore; and an anvil attachable to the trocar shaft and configured to be moveable relative to the housing by movement of the trocar shaft, the anvil including an anvil sleeve extending proximally from the anvil; and at least a pair of axially extending slots defined in a proximal end portion thereof and extending through a proximal end thereof, the anvil sleeve having a circumferential recess channel formed in an outer surface thereof and extending radially therearound, such that, the proximal end portion of the anvil sleeve deflects radially inward along the pair of opposed axially extending slots to dispose the anvil sleeve in the bore of the trocar shaft, as substantially recited in independent claim 100.

In view of the foregoing, for at least the reasons that amended independent claim 100 is allowable over Grant in view of Toledano and further in view of Whitman under 35 U.S.C.

§103(a), *inter alia*, Applicant respectfully submits that claim 105 is also allowable under 35 U.S.C. §103(a) over Grant in view of Toledano and further in view of Whitman.

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, or resolve any outstanding matters, the Examiner is sincerely invited to contact the Applicant's undersigned representative at the number indicated below.

In view of the foregoing amendments and remarks, reconsideration of the application and allowance of claims 100 and 102-109 is earnestly solicited.

Respectfully submitted,

Francesco Sardone
Reg. No. 47,918
Attorney for Applicants

***Carter, DeLuca, Farrell & Schmidt, LLP***
445 Broad Hollow Road – Suite 420
Melville, New York 11747
Telephone: (631) 501-5700
Facsimile: (631) 501-3526

FS/jy